



N. v. United Kingdom

Application No. 26565/05; [2008] ECHR 453

Country: United Kingdom

Region: Europe

Year: 2008

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Chronic and noncommunicable diseases, Health care and health services, HIV/AIDS, Medicines

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to health, Right to privacy

Facts

The applicant, a Ugandan national, was HIV positive and claimed that if the United Kingdom forced her to return to Uganda then she would not have sufficient access to medical treatment for her condition. She claimed that this result would violate her rights under Articles 3 (prohibiting torture and inhuman or degrading treatment or punishment) and 8 (guaranteeing respect for private and family life) of the European Convention on Human Rights (the "Convention").

The applicant entered the United Kingdom in March of 1998 under an assumed name. At the time of entry, the applicant was seriously ill and was therefore admitted to hospital, where she was diagnosed as HIV positive with significant immunosuppression and disseminated mycobacterium TB. Three days after entry, solicitors filed an asylum application in the applicant's name on the grounds that she feared for her safety as her participation in the Lord's Resistance Army in Uganda had resulted in her ill-treatment and rape by the National Resistance Movement. While the application was pending, the applicant developed a second AIDS-related illness, Kaposi's sarcoma. At this point, the applicant's CD4 count was down to 10, which is extremely low. After continuous treatment with antiretrovirals and consistent monitoring of her condition, the applicant's CD4 count rose to 414 by 2005. In March of 2001, a consultant physician prepared a report that stated that without continued, regular treatment with antiretrovirals, the applicant's life expectancy would be significantly reduced. The report noted that while the treatment would be available in Uganda, it would be expensive and in limited supply in the applicant's home town.

The Secretary of State refused the asylum claim in March of 2001. The applicant appealed on the asylum claim and also on Article 3 grounds. While the asylum appeal was not permitted, the appeal on Article 3 grounds was permitted. The adjudicator found that the situation fell under the Asylum Directorate Instruction and declared the United Kingdom as having assumed responsibility for the applicant's care. The Secretary of State appealed to the Immigration Appeal Tribunal on the grounds that medical treatment was available in Uganda. The case then moved to the Court of Appeal where the Court agreed with the government that it did not have an obligation to permit continued residence in the United Kingdom. Leave to appeal to the House of Lords was granted in 2005 and the House of Lords unanimously dismissed the applicant's appeal, finding in favor of the government. The applicant then appealed to the European Court of Human Rights for violation of Articles 3 and 8 under the Convention.

Decision and Reasoning

The Court held that there was no violation of Article 3 of the Convention and that it was not necessary to examine the complaint under Article 8.

With regards to the Article 3 claim, the Court held that there was not a violation of Article 3. The applicant claimed that the foreseeable result of her expulsion would be "exposure to acute physical and mental suffering, followed by an early death" and therefore this situation could fall under Article 3. The government, however, argued that Article 3 applied in medical situations only where there were exceptional circumstances because there was no evidence in the Convention that the Contracting Parties intended to create a loophole to circumvent immigration laws through Article 3. The Court looked at case law to date and determined that Article 3 only applied in medical situations where there were exceptional circumstances. For example, when

a person is on their deathbed and will have no one to care for them in their home country then it may be a violation of Article 3 to expel the person from the country. The Court noted that at the time of the case, the applicant's condition was stable. While there were differences in the availability and expenses associated with treatment in Uganda versus the United Kingdom, these differences did not amount to exceptional circumstances. Therefore, the government could expel the applicant without violating Article 3. The Court noted that as a general rule it must fall to the individual states to determine immigration policies.

With regards to Article 8, the Court held that it did not need to separately consider a violation of this Article as there were separate issues arising under Article 8 that it had not considered under the Article 3 claim.

In the Joint Dissenting Opinion of Judges Tulkens, Bonello, and Spielmann, it was argued that there was a violation of Article 3 in the present case and that separate consideration of Article 8 should have been conducted by the Court. With regards to Article 3, the dissenting judges noted their disagreement with the majority's findings that (a) harm emanating from acts of public authorities should be treated differently from harm emanating from the lack of a state's resources to properly care for illness; (b) the Convention was directed at civil and political rights, which the dissenting judges found ignored the approach integrating socio-economic rights adopted by the Court; (c) the intent of the Convention was to strike a fair balance between a community's interest and an individual's fundamental rights; and (d) imposing an obligation on member states to alleviate health disparities through provision of health care to aliens would place too great a burden on member states. Ultimately, the dissenting judges felt that the facts here were such as to constitute exceptional circumstances as required to invoke Article 3 in medical situations. This was based on evidence that the life expectancy of the applicant on return to Uganda would likely be less than two years. With regards to Article 8, the dissent noted that it is common to deny consideration on separate grounds when a violation was already found on the first ground, but is not common to deny consideration on second grounds after finding that there was no violation on the first ground.

Decision Excerpts

¶30. Contracting States have the right to control the entry, residence and removal of aliens. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3.

¶42. Aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling state. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to breach of Article 3. [it] may raise an issue under Article 3, but only in a very exceptional case, where humanitarian grounds against the removal are compelling.

¶44. Advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the Contracting State and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the Convention system, for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited health care to all aliens without a right to stay in its jurisdiction.